

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.29.101, 42.29.102, and) PROPOSED AMENDMENT
42.29.103 pertaining to universal)
system benefits programs)

TO: All Concerned Persons

1. On February 1, 2016, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, advise the department of the nature of the accommodation needed no later than 5 p.m. on January 22, 2016. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.29.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (12) remain the same.

(13) "Universal system benefits (USB)" programs" means public purpose programs for:

(a) through (f) remain the same.

AUTH: 69-8-413, MCA

IMP: 69-8-402, MCA

REASON: The department proposes amending ARM 42.29.101 to change the term being defined in (13) to match with the term currently used in statute and in practice by the department and to add the commonly referenced acronym "USB" to the term being defined.

42.29.102 PURPOSE (1) Universal system benefits (USB) programs ~~(USBP)~~ credit and expenditure rules are designed to help utilities, cooperatives, large customers, the state ~~USBP~~ USB programs fund administrator, and the general public ensure that money generated through a universal system benefits non-by-passable charge produces public purpose benefits.

(2) There may be activities, programs, or expenditures that are not addressed within the rules that qualify for credits or expenditures. Activities, programs, or expenditures identified in the rules are not intended to be all inclusive. An omission in the rules in no way implies or intends to affect credit amounts.

AUTH: 69-8-413, MCA

IMP: 69-8-103, 69-8-501, MCA

REASON: The department proposes amending ARM 42.29.102 to change USBP to USB, in (1), to match with the acronym used in statute and in practice by the department. The department further proposes amending the structure of the sentences in (2) by adding serial commas, for better clarity.

42.29.103 CLAIM PROCEDURE ANNUAL REPORTING AND PENALTIES

(1) Annual USB programs summary reports required pursuant to 69-8-402, MCA, must be filed with the department on or before March 1 of each year. ~~Credits claimed on annual reports filed after March 1 will not be allowed until the subsequent calendar year.~~

(2) The department shall provide written notice to each public utility or large customer claiming the USB credit that fails to submit a USB programs annual summary report by March 1 of each year. Penalties, authorized by 69-8-414, MCA, shall be imposed if the department does not receive a public utility's or large customer's USB programs annual summary report within 20 business days of the date on the department's written notice.

(3) If the department does not receive a USB programs annual summary report from the public utility or large customer claiming the USB credit within 20 business days of the department's written notice, as set forth in (2), the department shall impose a \$1,000 administrative penalty against the public utility or large customer. For each additional 30 days that the public utility or large customer does not file a USB programs annual summary report with the department, an additional \$1,000 administrative penalty, up to a maximum of \$5,000, will be assessed.

~~(2)(4)~~ Documents submitted by the ~~credit claimant~~ public utility or large customer shall be subject to the department's protective orders regarding confidential or proprietary materials. A ~~credit claimant~~ public utility or large customer claiming confidential or proprietary materials shall move the department for a protective order 30 days in advance of filing the USB programs annual summary report to allow an order to be issued prior to the ~~annual~~ report being filed. The motion for protective order must specify the material sought to be protected and the reason such materials should be considered confidential or proprietary.

(a) and (b) remain the same.

~~(3)(5)~~ The department shall publish a public notice listing:

(a) ~~the names of the claimants~~ public utilities or large customers who have filed application for the credits as shown on the annual summary reports;

(b) when the USB program annual summary report was filed;

(c) the specific date by which ~~challenges may be made~~ interested persons must file any challenge to a public utility's or large customer's claim for credit; and

(d) where to file the challenge.

~~(4)(6)~~ Publication of the public notice will occur within 20 days of the department receiving the public utility's or large company's USB programs annual summary report. The department shall publish the public notice on its web site and in the ~~six~~ major newspapers of general circulation for the state of Montana. ~~Those newspapers are: Independent Record; Montana Standard; Billings Gazette; Missoulian; Chronicle; and Great Falls Tribune.~~

~~(5)(7)~~ Claimed credits shall be presumed to be acceptable unless proven otherwise, and the burden of proving ineligibility of a credit lies with the challenging party. If the department receives a challenge to a claimed credit, it shall promptly notify the public utility or large customer claiming the credit ~~claimant in writing~~ of the challenge, in writing, and provide a copy of the ~~filed~~ interested person's challenge ~~with~~ and any supporting documents to the claimant.

AUTH: 69-8-413, MCA

IMP: 69-8-402, 69-8-414, MCA

REASON: The department proposes amending ARM 42.29.103 to implement Senate Bill (SB) 312, L. 2015, which added a notification requirement on the department and a penalty provision for utilities and large customers who fail to timely file a universal system benefits (USB) program annual summary report each year, effective March 1, 2016.

The department proposes striking the last sentence of (1) because although a late filing penalty will now apply, the credit may still be claimed in the year even if filed after the March 1 deadline.

The department proposes adding new (2) to inform the public utility or large customer that they will have 20 business days after being notified by the department to file their USB program annual summary report or incur assessment of an administrative penalty.

The department proposes adding new (3) to provide the penalty structure for the late filing of the USB program annual summary report, as set forth in proposed new (2), and as provided for in 69-8-414, MCA, with the passage of SB 312.

In addition to renumbering the remaining sections of the rule following the addition of the two new sections, the department proposes incorporating additional detail into these remaining sections to make them clearer. The department will also be posting all future public notices online, in addition to the newspaper notifications, and has added that detail to newly numbered (6).

The department further proposes updating the title of the rule to better reflect the rule content as amended.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than February 12, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 312, L. 2015, Mike Phillips, was contacted by letter on October 6, 2015, and December 14, 2015.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State December 28, 2015